

adverse effect on the respondent's ability to continue in business. These criteria relate to a respondent's entire business, and not just the product line or part of its operations involved in the violation(s). Beyond the overall financial size of the respondent's business, the relevant items of information on a respondent's balance sheet include the current ratio (current assets to current liabilities), the nature of current assets, and net worth (total assets minus total liabilities).

2. These figures are considered on a case-by-case basis. In general, however, a current ratio close to or below 1.0 means that the company may have difficulty in paying a large penalty, and may justify reduction of the penalty or an installment payment plan. A small amount of cash on hand representing limited liquidity, even with substantial other current assets (such as accounts receivable or inventory), may warrant a short-term payment plan. Respondent's income statement also will be reviewed to determine whether a payment plan is appropriate.

3. Many companies are able to continue in business for extended periods of time with a small or negative net worth, and many respondents have paid substantial civil penalties in installments even though net worth was negative. For this reason, negative net worth alone does not always warrant reduction of a proposed penalty or even, in the absence of factors discussed above, a payment plan.

4. In general, an installment payment plan may be justified where reduction of a proposed penalty is not, but the appropriateness of either (or both) will depend on the circumstances of the case. The length of a payment plan should be as short as possible, but the plan may consider seasonal fluctuations in a company's income if the company's business is seasonal (e.g., swimming pool chemical sales, fireworks sales) or if the company has documented specific reasons for current non-liquidity.

5. Evidence of financial condition is used only to decrease a penalty, and not to increase it.

E. Penalty Increases for Prior Violations

The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty. The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows:

1. For each prior civil or criminal enforcement case—25% increase over the pre-mitigation recommended penalty.
2. For each prior ticket—10% increase over the pre-mitigation recommended penalty.
3. A baseline proposed penalty will not be increased more than 100% on the basis of prior violations.
4. A case or ticket of prior violations initiated in a calendar year more than six years

before the calendar year in which the current case is initiated normally will not be considered in determining a proposed penalty for the current violation(s).

F. Penalty Increases for Use of Expired Special Permits

Adjustments to the base line figures for use of expired special permits can be made depending on how much material has been shipped during the period between the expiration date and the renewal date. If the company previously has been found to have operated under an expired special permit, the penalty is normally doubled. If the company has been previously cited for other violations, the penalty generally will be increased by about 25%.

[Amdt. 107-33, 60 FR 12141, Mar. 6, 1995, as amended by Amdt. 107-40, 62 FR 2972, 2977, Jan. 21, 1997; 62 FR 51556, Oct. 1, 1997; 65 FR 58618, Sept. 29, 2000; 66 FR 45180, Aug. 28, 2001; 68 FR 52848, 52855, Sept. 8, 2003; 69 FR 54044, Sept. 7, 2004; 70 FR 56090, Sept. 23, 2005; 70 FR 73162, Dec. 9, 2005; 71 FR 8487, Feb. 17, 2006]

Subpart E—Designation of Approval and Certification Agencies

§ 107.401 Purpose and scope.

(a) This subpart establishes procedures for the designation of agencies to issue approval certificates and certifications for types of packagings designed, manufactured, tested, or maintained in conformance with the requirements of this subchapter, subchapter C of this chapter, and standards set forth in the United Nations (U.N.) Recommendations (Transport of Dangerous Goods). Except for certifications of compliance with U.N. packaging standards, this subpart does not apply unless made applicable by a rule in subchapter C of this chapter.

(b) The Associate Administrator may issue approval certificates and certifications addressed in paragraph (a) of this section.

[Amdt. 107-31, 50 FR 10062, Mar. 13, 1985, as amended by Amdt. 107-23, 56 FR 66157, Dec. 20, 1991; 66 FR 45377, Aug. 28, 2001]

§ 107.402 Application for designation as an approval or certification agency.

(a) Any organization or person seeking designation as an approval or certification agency shall apply in writing to the Associate Administrator for